

Summit Carbon Solutions Testimony on Senate Bill 2317
January 27, 2023, 9:00 (10:30) A.M.
Senate Energy and Natural Resource Committee
Senator Dale Patten, Chairman

Jeff Skaare – Director of Land Summit Carbon Solutions

Opposition to SB 2317

Chairman Patten, and fellow Senate Committee Members.

My name is **Jeffrey Skaare**. I am the **Sequestration Director of Land Legal and Regulatory Affairs** for **Summit Carbon Solutions**. I am an attorney by education, and a certified professional landman by trade. Born, raised and educated in North Dakota, I have dedicated the majority of my professional career to the development of ND's vast mineral resources. I have witnessed first-hand the need for, and the buildout of, the necessary infrastructure to develop North Dakota's vast natural resources. I have personally overseen the acquisition, build out and operation of over 300 miles of pipeline within North Dakota. In my past employment, I was involved in the acquisition, reclamation, and operation of those same pipelines. I became involved in the Summit Carbon Solutions project because I believe that the two most important industries to North Dakota, namely Agriculture & Energy, will need to find a carbon management solution to continue to thrive. We have reviewed proposed Senate Bill No. 2317 and we oppose for the following reasons:

- 1.) The enactment of this bill creates threshold percentage that fails to take into consideration the property rights of the vast majority of landowners who desire to develop their pore space.
- 2.) By allowing the County to increase the percentage threshold, the enactment of this bill creates uncertainty whether 100% consent is required (thus removing the right of Amalgamation altogether); and
- 3.) The North Dakota State Legislature, by codifying NDCC Chapter 38-22 entitled Carbon Dioxide Underground Storage created a framework for a new industry in the State.

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I would like to address each of these points in turn.

First, proposed Senate Bill 2317 creates a threshold percentage that fails to take into consideration the property rights of the 84.99999999% of landowners who desire to develop their pore space. I am using 8 decimal places for a reason. It is common practice in land and title work to run title ownership out 8 decimals to properly account for each person's interest. There are two ways that property can be divided, and each has an infinite number of possibilities. Those two ways are known as divided tract ownership and undivided tract ownership.

A simple explanation of **divided tract** ownership includes a section, half section, quarter section, quarter quarter section, and so on. In addition, you can further divide tracts of land according to a metes and bounds description calling out the smallest of parcel of land imaginable.

A simple explanation of **undivided tract** ownership includes any number of the previously described **divided tracts** but each with multiple owners each owning a percentage (i.e. 10% each in 10 siblings). Each of these types of ownership can continue to be divided, smaller and smaller. What all Landmen have learned from running title to real property in the Williston Basin is that it is not uncommon to find significant division of both surface and mineral estates. Summit Carbon Solutions in its existing project has found **divided** surface tracts with ownership percentages as little as 4.16666667% with multiple owners, owning this same undivided percentage of the surface (and thus the pore space). Why is this important? The current law allows for pore space development when the majority of

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landowner consent to the development of their property. To allow a super minority to control the rights of the super majority is unjust and unfair to those landowners. This brings me to my second point.

Secondly, proposed Senate Bill 2317, allows for the County Commission to set the percentage threshold above 85%. Nothing is stopping them from requiring 100%. This is an end run on opposition to proposed Senate Bill 2228, which requires 100%. Under this standard, project opponents, or property owners who are non-responsive, could shut down an entire prospect. Said differently, a landowner who is one of ten undivided owners of a parcel who with a 4.16666667% undivided interest could decide to “not consent”, stopping the pore space development of 95.83333333% of landowners.

Third, in **2009**, the North Dakota State Legislature, enacted NDCC Chapter 38-22 entitled Carbon Dioxide Underground Storage, and thus created the framework for a new industry in the State. I encourage the members of this committee to take a moment and re-read Section 38-22-01 entitled, Policy. In short, this section of code states that “**It is in the public interest to promote the geologic storage of carbon dioxide.**” This section of code explains that in addition to the State and Federal benefits of reducing our greenhouse gas emissions, that CO2 storage will ensure the viability of the state’s coal and power industries and further provide ready availability of a potentially valuable commodity for commercial or industrial uses. I have provided the full text below for your review.

The hard work of prior legislators would be undone by the enactment of Senate Bill 2317. It is for these reasons that we oppose the enactment of Senate bill number 2317 and request a recommendation of **DO NOT PASS**. Thank you.

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38-22-01. Policy

It is in the public interest to promote the geologic storage of carbon dioxide. Doing so will benefit the state and the global environment by reducing greenhouse gas emissions. Doing so will help ensure the viability of the state's coal and power industries, to the economic benefit of North Dakota and its citizens. Further, geologic storage of carbon dioxide, a potentially valuable commodity, may allow for its ready availability if needed for commercial, industrial, or other uses, including enhanced recovery of oil, gas, and other minerals. Geologic storage, however, to be practical and effective requires cooperative use of surface and subsurface property interests and the collaboration of property owners. Obtaining consent from all owners may not be feasible, requiring procedures that promote, in a manner fair to all interests, cooperative management, thereby ensuring the maximum use of natural resources.

(emphasis added)